Bail Slip

The Appellant/ Accused namely Ezhumalai was directed to be released on bail by order of this Court dt. 8.2.02 in Crl.M.P.No.110/02 in Crl.A.No.923/99.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.08.2005

Coram :

THE HONOURABLE MR.JUSTICE N.DHINAKAR

and

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

Criminal Appeal No.923 of 1999

Ezhumalai ... Appellant/ Accused

v.

State : Represented by
Inspector of Police,
Pudupatti Police Station,
(Crime No.589 of 1997) ... Respondent/ Complainant

Criminal Appeal filed under Section 374 of the Code of Criminal Procedure against the judgment dated 21.09.1999 in Sessions Case No.227 of 1998 on the file of Principal Sessions Judge, Cuddalore.

For Appellant : Mr.M.G.L.Shankaran

For Respondent : Mr.S.Jayakumar,
Additional Public Prosecutor

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JUDGMENT

(Judgment of the Court was delivered
by M.CHOCKALINGAM, J.)

The sole accused in a case of murder, on being found guilty as per the charges levelled against and awarded life imprisonment for the offence under Section 302 of the Indian Penal Code and rigorous imprisonment for three years along with a fine of Rs.2,000/- carrying a default sentence of rigorous imprisonment for one year for the offence under section 436 of the Indian Penal Code, by the Court of Session, Cuddalore, has brought forth this appeal, challenging the judgment.

2. The short facts necessary for the disposal of the case could be summarized as follows :

(a) The accused/appellant belongs to Uraiyur. He married one Jayalakshmi and was living with her. While so, he developed illicit intimacy with the deceased Lakshmi and was living with her in a rented house owned by one Kasinathan. Few months prior to the date of occurrence the accused got the jewels of the sister of the deceased, but he did not return due to which there were quarrels between the accused and the deceased quite often.

(b) On 15.09.1997 at 08.00 pm the deceased quarrelled with the accused regarding the redemption of jewels, since her sister was insisting to get them back. In that quarrel he poured kerosene on her and set fire. When he found the burns on the deceased he made an attempt to save her and in that course he also sustained injuries.

(c) On getting the intimation about the incident, P.W.8 Fireman, Panrutti Fire Station rushed to the scene of occurrence, extinguished the fire and took both the accused and the injured (since deceased) to the Government Hospital, Panrutti. P.W.3, who was the doctor on duty at that time at 09.50 pm admitted both of them. When the doctor questioned the injured, she gave a statement and it was also recorded by P.W.3 in the accident register. The copy of the accident register stands marked as Ex.P.9. Following the same the doctor advised that she could be taken to the Government Hospital, Cuddalore. At about 09.55 pm the appellant/accused was admitted and his statement was also recorded. The copy of the accident register speaking about the injuries sustained by him is Ex.P.10.

(d) P.W.5, the brother of the deceased and his friend P.W.7, on coming to know about the occurrence, rushed to Panrutti Hospital, where they were advised to take the deceased to the

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Government Hospital, Cuddalore. Therefore, he engaged a taxi, which was driven by P.W.10 and on the way she informed him that it was the accused/appellant who poured kerosene and set fire on her and when they went to the Government Hospital, Cuddalore, the doctor at Cuddalore admitted her in the hospital and immediately an information was passed on to P.W.2, the Judicial Magistrate to record the dying declaration of the deceased. P.W.2, the Judicial Magistrate No.II, Cuddalore, proceeded to the hospital and on being certified by the doctor that she was mentally and physically fit to give a dying declaration, recorded the dying declaration of Lakshmi, which stands marked as Ex.P.5.

(e) In the meantime, P.W.1, the Village Administrative Officer, on being informed about the incident, went to the Pudupet Police station at 09.30 pm and gave a complaint to the Sub Inspector of Police, P.W.11, which stands marked as Ex.P.1. P.W.11 on the strength of Ex.P.1 registered a case in crime No.589/1997. The printed first information report stands marked as Ex.P.14, a copy of which was sent to Court. P.W.11 proceeded immediately to the scene of occurrence, made an inspection in the presence of witnesses and prepared Ex.P.2 observation mahazar and sketch, Ex.P.3. He also recovered from the place of occurrence, Mos. 1 to 6 under a mahazar, Ex.P.4. At that time P.W.5 gave a complaint, which is marked as Ex.P.13. Photographs of the scene of occurrence were taken. The photographs and the negatives were marked as M.Os.7 and 8 series. P.W.11, on receipt of the death intimation, Ex.P.15 from the Government Hospital, Cuddalore, altered the crime into one under Section 302 of the Indian Penal ode. Ex.P.16 is the copy of the first information report in the altered crime, which was also sent to Court.

(f) P.W.12, the Inspector of Police, attached to the Panrutti Police Station took up further investigation in the crime and went to the Government Hospital, Cuddalore and conducted inquest over the dead body in the presence of witnesses and panchayatdhars and prepared Ex.P.17, the inquest report. Following the same, on a requisition from the Investigating Officer, the doctor attached to the Government Hospital, Cuddalore conducted autopsy on the dead body of the deceased opining that the deceased died of shock due to extensive burns of 100 per cent. P.W.12, the Investigating Officer again went to the scene of occurrence and examined some more witnesses. He arrested the accused/appellant and sent him to judicial remand. The material objects recovered from the dead body of the deceased and the recovered from the place of occurrence were subjected to chemical analysis pursuant to a requisition from the Judicial Magistrate and on completion of the investigation the Investigating Officer filed the final report. The Judicial Magistrate concerned committed the case to the Court of Session. Necessary charges were framed by the Court of Session.

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3. In order to substantiate the charges levelled against the appellant/accused, the prosecution marched 12 witnesses and relied on 17 exhibits and 8 material objects. On completion of the evidence on the side of the prosecution, the accused was questioned under Section 313 of the Code of Criminal Procedure as to the incriminating circumstances found in the evidence of the prosecution witnesses, and he flatly denied the same as false. No witness was examined on his side nor any exhibit was marked. After hearing both sides, the trial Court was of the opinion that the prosecution has proved its case beyond all reasonable doubts and found the accused guilty of the charges levelled against him and directed him to undergo life imprisonment. Hence the appeal.

4. Learned counsel appearing for the appellant, inter alia, made the following submissions. In the instant case, it is admitted that P.W.8, the Fireman was informed that there was an accident and he rushed to the scene of occurrence and quenched the fire and it was the Fireman, who took the injured and the accused to the hospital at Panrutti and from which it could be inferred that it was only an accident and it was not an act of the accused.

5. Added further the learned counsel for the appellant that immediately when the injured was admitted with burn injuries, she gave a statement to P.W.3, which is the earliest statement stating that it was her own act and that her statement was recorded in the accident register, Ex.P.9. P.W.3 has been examined by the prosecution, who has fairly stated about the statement of the injured, which was recorded by her in the accident register, Ex.P.9. This evidence has not been given up by the prosecution. The prosecution has no where brought forth from the evidence that P.W.3 has made a false statement. Under such circumstances, the evidence of P.W.3 would be binding on the prosecution. It is also in evidence that the injured was taken from Panrutti to Cuddalore Government Hospital by P.W.5 and P.W.7 in a taxi driven by P.W.10. In the instant case it would be quite clear that P.W.5 was on inimical terms with the appellant/accused. Under such circumstances, there was all possibility of P.W.5 tutoring the injured to give a statement to the Judicial Magistrate in such a way that it was the act of the accused. In the instant case no record from the Government Hospital of Cuddalore was summoned in order to show that what was the statement given by the injured to the doctor P.W.6, who sent requisition to the Judicial Magistrate to record the dying declaration of the deceased, but the prosecution has relied on the dying declaration recorded by the Judicial Magistrate, P.W.2 at 12.40 pm, in which the injured had implicated the accused/appellant as the person responsible for the crime. No evidentiary value could be attached to the dying declaration since there was a long interval between the statement

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given by the injured to P.W.3, the doctor and to P.W.2, the Judicial Magistrate and during the interval P.W.5, who was on inimical terms with the accused/appellant had taken her to the Government Hospital, Cuddalore from Panrutti, in a taxi during which time there was every possibility of he tutoring the injured.

6. In the instant case, one of the very strong circumstances is that at the time of occurrence though the injured suffered severe burn injuries, she did not make an attempt to come out of the house nor did anybody hear her distressing cries calling the neighbour, which would indicate that it is her own act and the lower Court, without considering all these aspects, had been carried over by the dying declaration recorded by the Judicial Magistrate and has found the accused/appellant guilty and hence the accused has got to be acquitted for which he is entitled to in the hands of this Court.

7. The court heard the learned counsel for the State on the above contentions.

8. It is not in dispute that Lakshmi, who was the mistress of the appellant died on account of the burn injuries when she was hospitalised and in order to substantiate the same the doctor who conducted postmortem on the body of the deceased and who issued Ex.P.12 post mortem certificate was examined as P.W.7. Nowhere the appellant questioned the said fact that the deceased died on account of the burn injuries. Under the circumstances, we have no hesitation in holding that the deceased died on account of homicidal violence. What was all claimed by the appellant is that it was her self act and not the act committed by the accused. To substantiate that the accused committed the crime, the prosecution did not bring forth any direct evidence, because no one has witnessed the occurrence.

9. The first and foremost ground was that had it been true that it was the act of the accused, the deceased should have attempted to come out of the house and called the neigbours for help, but in the instant case, no distressing cries were heard, nor did the deceased come out of the house. She has kept herself inside the house and the major portion of the house was burnt. According to the defence, at the time when she poured kerosene on herself and set fire, the accused made an attempt to save her and in that course, he also sustained burn injuries, but the prosecution has relied on the dying declaration recorded by the Judicial Magistrate No.II, Cuddalore at 12.40 pm on 10.09.1997.

10. In the instant case, it is brought to the notice of the Court by the accused/appellant that there was a statement given by the injured to P.W.3, the doctor, when she was taken to the

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hospital by P.W.8, the Fireman, which statement is recorded by P.W.3 in the accident register, Ex.P.9. A perusal of Ex.P.9 accident register would clearly indicate that she had stated to the doctor that she poured kerosene on her and apart from that P.W.3 has also been before the Court by the prosecution and through him Ex.P.9 the copy of the accident register has been marked, wherein P.W.3 has spoken to the fact that the injured was conscious when she made the statement. No circumstances was brought forth by the prosecution to disbelieve the evidence of P.W.3 or the Ex.P.9, wherein it has been clearly stated that it was her self act. Under the circumstances, the Court is unable to see any reason to reject the testimony of P.W.3, since the statement made by the deceased to P.W.3 is the earliest statement and so long as no circumstance is brought to the notice of the Court to disbelieve the evidence of P.W.3 and the contents of Ex.P.9, the Court has to accept them. Further it has to be pointed out that the deceased who sustained burn injuries to the extent of 99%, was taken to the hospital immediately by the Fireman and had it been true that it was the act of the accused/appellant, she would have stated to P.W.3 that it was the accused, who was responsible for the burns found on her.

11. It is also pertinent to point out that it is clear from the evidence of P.W.5 that he had inimical terms with the accused and when he took her to the hospital he must have tutored her and when she gave the dying declaration to P.W.2 at 12.40 pm she would have come out with a version that it was the appellant/accused who had poured kerosene on her as there was a long interval in between the statements, during which there was a possibility of P.W.5 to tutor the deceased and therefore, no evidentiary value can be attached to Ex.P.5 dying declaration. The evidence that was available for the prosecution would clearly point out the possibility of the deceased setting fire on herself and it was not the accused who poured kerosene and set fire. Under the circumstances, the benefit of doubt should be given to the accused to which he is entitled to. Accordingly the judgment of the lower Court is set aside and the accused/appellant is acquitted of the charges. The criminal appeal is allowed.

12. The bail bonds executed by the appellant shall stand cancelled forthwith. The fine amount paid by the appellant shall be refunded to him.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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Copies to

1. The Principal Sessions Judge, Cuddalore.

2. The Judicial Magistrate, Panrutti.

3. The Judicial Magistrate, Panrutti,
   through the Chief Judicial Magistrate, Cuddalore.

4. The District Collector, Cudddalore

5. The Director General of Police, Mylapore, Chennai-4.

6. The Superintendent,
   Central Prison, Cuddalore

7. The Public Prosecutor,
   High Court, Madras.

8. The Inspector of Police,
   Pudupatti Police station, Cuddalore.

Crl.A.No.923 of 1999

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